

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff/Respondent,  
  
v.  
  
DAVID A. NICHOLS,  
  
Defendant/Petitioner.

No. 2:89-cr-00258-WBS-AC-9

FINDINGS & RECOMMENDATIONS

Petitioner David A. Nichols seeks coram nobis relief from his 1990 convictions for violating 21 U.S.C. § 841(A)(1) (manufacturing, distributing or dispensing, or possessing with intent to manufacture, distribute or dispense, a controlled substance) and 21 U.S.C. § 846 (attempting or conspiring to commit the preceding offenses). ECF No. 304 (Petition for Writ of Coram Nobis). Petitioner seeks to expunge his conviction and set aside his resulting sentence (originally 327 months, reduced to 262 months on August 15, 2017, ECF No. 303) on the ground that the federal court did not have jurisdiction to convict and sentence him. Petitioner contends that his presence on nonfederal land in the state of California at the time of his arrest was outside the territorial jurisdiction of the United States; that jurisdiction cannot be premised on the Commerce Clause because petitioner was not engaged in interstate commerce; and that Congress was without constitutional authority to “morally legislate” and enact the criminal statutes underlying his convictions.

1 This action is referred to the undersigned United States Magistrate Judge pursuant to 28  
2 U.S.C. § 636(b)(1)(B) and Local Rule 302(c). For the reasons set forth below, the undersigned  
3 recommends that the petition be summarily denied.

4 Coram nobis is an extraordinary form of relief, available to challenge the validity of a  
5 conviction after the sentence has been fully served, “under circumstances compelling such action  
6 to achieve justice.” United States v. Morgan, 346 U.S. 502, 511 (1954). The writ of coram nobis  
7 allows a court to vacate its judgment “for errors of fact . . . in those cases where the errors [are] of  
8 the most fundamental character, that is, such as rendered the proceeding itself invalid.” United  
9 States v. Mayer, 235 U.S. 55, 69 (1914). To qualify for coram nobis relief, a petitioner must  
10 demonstrate that: (1) a more usual remedy is not available; (2) valid reasons exist for not  
11 attacking the conviction earlier; (3) adverse consequences exist from the conviction sufficient to  
12 satisfy the case or controversy requirement of Article III; and (4) the error is of the most  
13 fundamental character. United States v. Riedl, 496 F.3d 1003, 1006 (9th Cir. 2007).

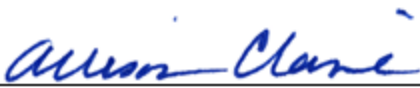
14 The claims asserted by petitioner fail to demonstrate an error warranting coram nobis  
15 relief. Although petitioner is correct that he was not on federal land when arrested, and his  
16 criminal prosecution was not directly premised on the Commerce Clause, “[t]he Supreme Court  
17 has instructed that Congress may regulate those wholly intrastate activities which have an effect  
18 upon interstate commerce.” United States v. Visman, 919 F.2d 1390, 1393 (9th Cir. 1990), cert.  
19 denied, 502 U.S. 969 (1991) (citing Wickard v. Filburn, 317 U.S. 111, 125 (1942), and United  
20 States v. Darby, 312 U.S. 100, 120-21, (1941)). More specifically, the constitutionality of 21  
21 U.S.C. § 841(a)(1) et seq., pursuant to which petitioner was prosecuted and convicted, have  
22 routinely been upheld on the ground that Congress has the authority under the Commerce Clause  
23 to criminalize intrastate drug activity. United States v. Kim, 94 F.3d 1247, 1250 (9th Cir. 1996)  
24 (citing Visman, 919 F.2d at 1393). “Even if it be true that Defendant merely intended to use the  
25 [controlled substance] for himself, that fact makes no difference. The government need not  
26 demonstrate a nexus to interstate commerce in every prosecution pursuant to section 841(a)(1).”  
27 United States v. Smith, 920 F. Supp. 245, 248 (D. Me. 1996) (cited with approval in Proyect v.  
28 United States, 101 F.3d 11, 14 (2d Cir. 1996).

1 Moreover, Congress has vested in the federal district courts jurisdiction to prosecute  
2 federal crimes and to sentence defendants convicted of those crimes. United States v. Lee, 472  
3 F.3d 638, 641 (9th Cir. 2006) (citing 18 U.S.C. § 3231 (“The district courts of the United States  
4 shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the  
5 laws of the United States.”)). Petitioner’s personal disagreement with Congress’s choice to  
6 criminalize the conduct underlying his convictions does not impact this court’s jurisdiction over  
7 petitioner’s prosecution and sentencing.

8 For these reasons, the undersigned finds petitioner’s claims without merit as a matter of  
9 law. Accordingly, IT IS HEREBY RECOMMENDED that petitioner’s petition for writ of coram  
10 nobis, ECF No. 304, be DENIED.

11 These findings and recommendations are submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
13 days after being served with these findings and recommendations, any party may file written  
14 objections with the court and serve a copy on all parties. Such a document should be captioned  
15 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
16 shall be served and filed within seven days after service of the objections. The parties are advised  
17 that failure to file objections within the specified time may waive the right to appeal the  
18 District Courts order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 DATED: November 21, 2019

20   
21 ALLISON CLAIRE  
22 UNITED STATES MAGISTRATE JUDGE  
23  
24  
25  
26  
27  
28